



# Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 605**

**IN THE MATTER  
OF  
PHILLIP S. NELSON**

## **DISPOSITION AGREEMENT**

The State Ethics Commission ("the Commission") and Phillip Nelson, ("Nelson") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 23, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Nelson. The Commission has concluded its inquiry and, on March 22, 2000, found reasonable cause to believe that Nelson violated G.L. c. 268A.

The Commission and Nelson now agree to the following findings of fact and conclusions of law:

1. Nelson was, during the time relevant, a member of the Randolph Landscape Review Board ("LRB").<sup>1/</sup>
2. The five-member LRB was established by town meeting in 1972 to advise the planning board and zoning board of appeals on landscape matters in connection with any business, industrial or multi-family developments.

The LRB's procedures contemplate the following process: Site plans are referred to the LRB by the planning board, zoning board or building inspector, and the LRB has fourteen days to report back to the referring entity. The LRB meets once a month and reviews about two or three plans each meeting. Receiving two copies of the plans, the LRB reviews the size and type of landscaping as well as the materials to be used to insure that the landscaping is appropriate and consistent with the surrounding area. The LRB meets with the applicant to reach agreement on modifications the LRB recommends; once agreement is reached, the LRB and applicant sign the two plans; the LRB maintains one copy and forwards the other to the Building Commissioner; the LRB approves the issuance of the permit; the LRB chairman signs the Building Permit Application Sign-On Sheet;<sup>2/</sup> when the work is completed, the LRB (or a majority of the LRB) does a site inspection, followed by the LRB Chairman's signing the Building Department Certificate of Occupancy Sign-Off Sheet.

3. Although the LRB procedures appear to have contemplated a fairly formal process, the actual practice was much less rigorous. One member of the LRB would generally sign the Sign-On Sheet, but that did not necessarily mean that the LRB had reviewed the plans. Sometimes there were plans that

contemplated no landscaping; sometimes it was obvious that the plans would eventually require landscaping, but the landscaping plan had not yet been drafted because it would be provided later. Moreover, once the landscaping was actually done, one or more of the LRB members would inspect the site and then, assuming the “as built” was satisfactory, one of the members would sign the Sign-Off Sheet. The board would not necessarily meet to accomplish these tasks.

4. Nelson owns and operates Nelson Landscaping and Garden Center, Inc. in Randolph, a company which has operated for almost forty years.

### **Honey Dew Donuts**

5. On November 14, 1996, Nelson as an LRB member unilaterally signed the Sign-On Sheet (signifying approval by the LRB to the issuance of the building permit) for the Honey Dew Donuts project at 106 Mazzeo Drive with the understanding that the landscaping plans would be submitted later.

6. On October 19, 1997, Nelson submitted a \$3,600 estimate for proposed landscaping work at the Honey Dew site and did the work shortly thereafter. Almost immediately, an LRB member raised an issue as to why the work was done prior to LRB review and approval.

7. On October 28, 1997, Nelson presented a landscaping sketch to the LRB depicting the work Nelson Landscaping, Inc. had done at the Honey Dew site and represented that the work had been done properly. He also explained why he did the work without first obtaining approval. (His explanation was that the work needed to be done immediately so that the developer could open up for business.) The LRB voted 2-2 on approving the plan with Nelson abstaining. The plan, therefore, was not approved. Nelson was admonished to follow proper procedure, i.e., submit the landscaping plan *before* doing the work.

8. On November 25, 1997, the LRB again voted on the Honey Dew matter. The vote was 2-0 with Nelson abstaining. Nelson did not make any presentation at that time.

9. On December 9, 1997, LRB member Karl Wells “signed off” on the Sign-Off Sheet permit for Honey Dew Donuts on behalf of the LRB. According to Wells, he did not conduct a formal inspection because the LRB did not have an approved plan to compare to the completed landscaping. He agreed to sign-off on the matter so as not to hold up the occupancy permit and because he relied on Nelson’s earlier representation that the work had been done properly.

10. Honey Dew paid Nelson Landscaping the \$3,600 in March 1998.

### **Jamp Realty - Shaw’s Supermarket**

11. On June 2, 1997, Jamp Realty submitted a building permit application for certain renovations and site improvements in or around the Shaw’s Supermarket. There was no LRB approval required because there was no landscaping contemplated on the building plan at that time. (The project involved interior building renovations.)

12. Sometime shortly thereafter, the Building Department issued the building permit.

13. On July 28, 1997, the LRB met and discussed the fact that no landscape plan had been submitted for the project, and that Nelson would contact the owner of the plaza and suggest planters in the parking lot. (Nelson later did so.)

14. On February 24, 1998, the LRB reviewed the project plans. No landscaping was noted.

15. At some uncertain point thereafter, Jamp Realty decided to incorporate landscaping into its plans for the project.

16. In or about November 1998, Nelson did the contemplated landscaping work, which he then billed Jamp Realty for \$4,345.

17. In or about November 1998, Nelson submitted a landscape plan for the landscape work to the LRB.

18. On November 24, 1998, the LRB reviewed the landscaping plan. They found no problems with the work. Nelson appeared on behalf of Nelson Landscaping and Garden Center, Inc. and advised the board on the work that had already been done. He abstained as an LRB member. Nelson explained to the board that although the original plan called for twelve trees on six islands plus certain other plantings, the work involved planting six trees on six islands. Nelson explained that the change was necessary because the parking lot islands could not go in as planned.

19. It is unclear if the work was ever inspected by the LRB. The occupancy certificate issued, although the Sign-Off Sheet was not signed by the LRB.<sup>3/</sup>

20. In January and February, 1999, Jamp Realty paid Nelson Landscaping and Garden Center, Inc. for the above work.

21. Section 17(c) of G.L. c. 268A prohibits a municipal employee from acting as agent for anyone other than the municipality in connection with a particular matter<sup>4/</sup> in which the municipality is a party or has a direct and substantial interest. Section 17 applies less restrictively to special municipal employees. Special municipal employees are prohibited from acting as agent for or receiving compensation from a private party if they have participated<sup>5/</sup> in or have official responsibility<sup>6/</sup> for the particular matter in question.<sup>7/</sup>

22. At all times relevant, Nelson was a member of the LRB. As such he was a municipal employee as that term is defined in G.L. c. 268A, §1. Furthermore, at all times relevant Nelson's position was designated as a special municipal employee position for G.L. c. 268A purposes.

23. The decisions by the LRB regarding the Honey Dew and Jamp Realty projects on October 28, 1997, and November 24, 1998, respectively, were particular matters.

24. The town had a direct and substantial interest in these particular matters because they were an integral part of the process by which the building permits issued and because the town bylaws required this input.

25. Nelson represented Nelson Landscaping and Garden Center, Inc. at these meetings. Thus, he acted as an agent for someone other than the town in connection with particular matters in which the town had a direct and substantial interest. By doing so, Nelson violated §17(c).

26. Nelson incorrectly believed that it was permissible to represent private clients before the LRB provided that as an LRB member he abstained from voting, discussing or acting on any matter in which a client had an interest. His understanding was incorrect.

27. Nelson cooperated fully with the Commission's investigation.

In view of the foregoing violations of G.L. c. 268A by Nelson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Nelson:

- (1) that Nelson pay to the Commission the sum of one thousand seven hundred and fifty dollars (\$1750) as a civil penalty for violating G.L. c. 268A, §17(c);<sup>8/</sup>
- (2) that Nelson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: July 13, 2000**

<sup>1/</sup>Nelson was appointed to the LRB in 1989 and served on the board until it was abolished in November 1999, when its duties were transferred to the Design Board.

<sup>2/</sup>The Building Permit Application Sign-On Sheet is a document which accompanies the plans and contemplates a signature from each department with an interest in the matter. The signature signifies that the signer's department has no objection to the permit issuing.

<sup>3/</sup>According to Nelson, this was because the particular sign-off simply "fell through the cracks."

<sup>4/</sup>"Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

<sup>5/</sup>"Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

<sup>6/</sup>"Official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.

<sup>7/</sup>Section 17 would also apply in this context if the particular matter were pending before the special municipal employee's agency, and if the special municipal employee served on more than sixty days during any period of 365 consecutive days.

<sup>8/</sup>It should be noted that §17 is not limited to just appearances before a board or its employees. Section 17(a) prohibited Nelson from being paid for doing the landscaping work in the field because it was in relation to an LRB approval of the plans and eventual inspection and approval of what was done. Thus, Nelson's receiving compensation from Honey Dew and Jamp Realty for the actual landscaping work violated §17(a), and would have done so even if he had never appeared before the LRB regarding that work. No separate penalty is imposed for that conduct, however. See *In re Martin*, 1999 SEC 931 (public enforcement letter for work done in relation to permits even though no appearances before board.)